

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel, W.A. DREW
EDMONDSON, in his capacity as ATTORNEY
GENERAL OF THE STATE OF OKLAHOMA,
et al.,

Plaintiff,

v.

TYSON FOODS, INC., et al.,

Defendants.

Case No. 4:05-CV-329-JOE-SAJ

MOTION FOR LEAVE TO FILE REPLY

COME NOW Defendants, Tyson Foods, Inc.; Tyson Poultry, Inc.; Tyson Chicken, Inc.; and Cobb-Vantress, Inc., pursuant to FED. R. CIV. P. 6, 7 and LCvR7.1 and, additionally on behalf of Cal-Maine Foods, Inc.; Cal-Maine Farms, Inc.; Cargill, Inc.; Cargill Turkey Production, LLC.; George's, Inc.; George's Farms, Inc.; Peterson Farms, Inc.; Simmons Foods, Inc.; and Willow Brook Foods, Inc. (collectively, "Defendants"), and hereby respectfully request this Court to issue an order granting Defendants leave to file *Defendants' Reply in Support of their Motion to Stay Proceedings and Request for Expedited Hearing*. As support for their Motion, Defendants state the following.

1. Pursuant to LCvR7.1(D), the filing deadline for *Defendants' Reply in Support of Their Motion to Stay Proceedings and Request for Expedited Hearing* (the "Reply") was December 13, 2005. The Reply was completed, finalized, and ready to be timely filed on December 13, 2005. *See* Affidavit of Melissa Keplinger, attached hereto as Exhibit "1" at ¶ 3.

2. Starting at approximately 8:30 p.m. on December 13, 2005, the undersigned counsel and staff attempted to file the Reply through this Court's electronic court filing ("ECF") system, but were unable to gain access to the Court's website through which ECF filings are made. *See id.* at ¶ 4.

3. The undersigned counsel and staff made continuous attempts from 8:30 p.m. until 10:45 p.m., through two computer systems, but were never able to gain access to this Court's ECF system during that time period. *See id.* at ¶ 5.

4. There were no line problems, ISP problems, hardware or software problems involving the undersigned counsel's computer system as access to the Internet, e-mail, and numerous other websites was available at all times on December 13, 2005, and specifically during the time period of 8:30 p.m. to 10:45 p.m. on that day. *See id.* at ¶ 6.

5. As set forth above, the Court's ECF system was unable to accept filings from the undersigned counsel continuously or intermittently over the course of a time period greater than two (2) hours after 12:00 p.m. on December 13, 2005. *See id.* at ¶ 7.

6. During the pendency of the above-captioned litigation to date, the undersigned counsel and staff have made at least twenty (20) different filings through this Court's ECF system and have never encountered a problem. *See* Docket Nos. 34, 35, 36, 48, 64, 65, 66, 67, 69, 71, 73, 80, 94, 125, 137, 142, 143, 144, 145, and 146 (filed December 6, 2005). *See id.* at ¶ 8.

7. Defendants are requesting leave to file the Reply attached hereto as Exhibit "2," and that such filing be deemed timely by the Court due to the facts and circumstances outlined above.

8. This Motion is filed on December 14, 2005, the day following the filing deadline for the Reply.

9. None of the Defendants' individual or collective filings have been untimely in this matter, nor have any of the Defendants made any previous requests to make filings out of time.

10. Defendants have satisfied the discretionary standard for granting an enlargement of time because Defendants made good faith efforts to file the Reply on December 13, 2005 and, as demonstrated above, Defendants have a reasonable basis for their requested relief. *See* FED. R. CIV. P. 6(b)(2); *Putnam v. Morris*, 833 F.2d 903, 905 (10th Cir. 1987).

11. The undersigned has conferred with counsel for the Plaintiff and is authorized to represent that the Plaintiff has no objection to this Motion.

Respectfully submitted,

BY: /s/ Stephen L. Jantzen
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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of December, 2005, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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and I further certify that a true and correct copy of the above and foregoing will be mailed via regular mail through the United States Postal Service, postage properly paid, on the following who are not registered participants of the ECF System:

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